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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,380	06/01/2006	Robertus Martinus M. Diks	F7743(V)	3881

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EXAMINER	
SMITH, PRESTON	

ART UNIT	PAPER NUMBER
1782	

NOTIFICATION DATE	DELIVERY MODE
02/15/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/581,380	DIKS ET AL.	
	Examiner	Art Unit	
	PRESTON SMITH	1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 November 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5 and 11-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5 and 11-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5 and 11-14 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In paragraph 0043 of applicant's specification it is stated that:

"In those embodiments where the fat is a vegetable fat, the fat is preferably selected from the group comprising sunflower oil, rapeseed oil, soy bean oil, olive oil, linseed oil or a combination thereof. The most preferred fats have a polyunsaturated fatty acid (PUFA) content of at least 30 wt % PUFA on total triglyceride composition."

In paragraph 0044 of applicant's specification it is stated that:

"The amount of fat is preferably from 0.1 to 8 wt %, more preferred from 1 to 5 wt %."

There appears to be no support for 0.1 - 8wt% "triglyceride" as stated in paragraph 2 of page 4 of applicant's arguments.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5, 11-14 rejected under 35 U.S.C. 103(a) as being unpatentable over Auriou, WO 02/065859 as evidenced by The Influence of Raw and Sterilized Milk NPL and Technology of dairy products NPL..

Regarding claims 1, 4-5,7, 13-14, Auriou teaches preparing an emulsified product (dispersion or suspension (page 12, 3rd paragraph)) comprising phytosterol dispersed in an aqueous phase, which comprises mixing particulate phytosterol with an aqueous phase, adding a non-sterol emulsifier having an HLB value of at least 7 to the aqueous phase and/or to a fat phase, and mixing the ingredients together with the

aqueous phase and the fat phase to form an emulsion (page 3, 4th paragraph). The aqueous phase is preferably maintained at a temperature of between 60-100 C (for at least 5 minutes to 2 hours) and stirred until the phystosterol is evenly dispersed and milk protein may be added (page 12, 3rd paragraph) however it is important to maintain a temperature of 80 C or higher during dissolution of phytosterols in order to avoid recyrstallization of the phytosterols (see page 2, 2nd paragraph of Auriou) . Common sterilization temperatures and times of similar "milky" compositions fall within the range of Auriou as evidenced by TheInfluenceofRawandSterilizedMilkNPL and Technology of dairy products NPL. Aurio is thus considered to teach a "sterilized" product embodiment since sterilization would occur at temperatures of 100 C and times of 30 minutes as evidenced by the references). The resulting product is "milky" (page 12, 3rd paragraph of Auriou). Monoglycerides may be used as an emulsifier (page 13, 3rd paragraph). The amount of non-sterol emulsifier may be between 0.01 -1% by weight in the final product (page 8, 4th paragraph). POE fatty esters may also be added to the product (page 10, 3rd paragraph).

Auriou fails to teach the claimed trigylceride range.

Auriou teaches that the amount of fats would vary depending on the type of product desired (page 9, 3rd paragraph). Fats in low fat salad dressings may be from 0-10% (page 9, 3rd paragraph). Also, the fats may comprise fats that naturally have triglycerides such as corn oil, soybean oil, peanut oil (page 9, last paragraph. Applicant uses same fats as can be seen in 0043 of applicant's specification). In light of these teaching of Auriou, if one of ordinary skill in the art desired to produce a low fat salad

dressing (or food product) product, one of ordinary skill in the art at the time of the invention would have found it obvious to look to this teaching of Auriou and maintain the fat content from 0-10%. In light of Auriou, it is thus considered that the claimed trglyceride range, which is a % of the fat content, would have been obvious and discoverable through routine experimentation.

Regarding claims 2-3, Auriou teaches a product made by a very similar method as the embodiment discussed previously wherein the product has a Milk protein content of 0.9 wt% in Table 1 on page 16.

Auriou fails to teach the wt% of milk protein in the described method embodiment of the invention however.

It would have however been obvious to one having ordinary skill in the art at the time of the invention to maintain the milk protein content close to 0.9% in order to maintain the integrity of the invention of Auriou and produce a product with the properties desired by the invention of Auriou. Since producing a product with a similar milk protein amount would have been obvious, it is considered that applicant's claimed range of 0.5-10wt% would have been obvious in light of Auriou.

Regarding claim 11, the amount of emulsion stabilizer/thickener that may be included in the composition may be in the range of 0-30% by weight of the composition depending on the desired consistency of the end product (see page 11, last paragraph). In light of this range, one of ordinary skill would have found applicant's claimed range

obvious and discoverable through routine experimentation in an attempt to obtain a desired consistency.

Regarding claim 12, Auriou teaches the components of claim 1 and further teaches a broader fat range. Since amounts such as 1% are obvious in light of the range of Auriou, applicant's age gelation property would have been obvious and discoverable through routine experimentation since if one of ordinary skill used 1%, one of ordinary skill would have the same composition as applicant's invention of claim 1 and thus the claim gelation properties would naturally occur.

Response to Arguments

Applicant's arguments filed 11/22/2010 have been fully considered but they are not persuasive.

Applicant points out on page 6, 3rd paragraph that at temperature of 80C or higher that fats and oils are vulnerable to oxidization in Auriou however this certainly is not a teaching away. Applicant also argues that there is no teaching of subjecting triglyceride fats to sterilization temperatures. The newly amended claim has no support as pointed out previously and further, Auriou teaches that the amount of fats would vary depending on the type of product desired (page 9, 3rd paragraph). Fats in low fat salad dressings may be from 0-10% (page 9, 3rd paragraph). Also, the fats may comprise fats that naturally have triglycerides such as corn oil, soybean oil, peanut oil (page 9, last

paragraph. Applicant uses same fats as can be seen in 0043 of applicant's specification).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRESTON SMITH whose telephone number is (571)270-7084. The examiner can normally be reached on Mon-Th 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1782

prs